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THE CERTIFICATEHOLDERS OF STRUCTURED ASSET MORTGAGE
INVESTMENTS II INC. BEAR STEARNS MORTGAGE FUNDING TRUST
2007-AR4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-
AR4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

In re

RUSTICO SUGATAIN BLANCO AND
CHARITO ORCINE BLANCO,

Debtor(s).

Case No.09-43647

Chapter 7

R.S. No. JBA-480

MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

DATE: September 4, 2009
TIME: 10:00 AM
CTRM: 215

1300 Clay Street,
Oakland, CA 94604-1426

Wells Fargo Bank, National Association as Trustee for the Certificateholders of
Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR4
Mortgage Pass-Through Certificates, Series 2007-AR4 ("Movant"), moves this court for an
order terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may
commence and continue all acts necessary to enforce its security interest in real property
generally described as 276 Blossom Way, Hayward, California 94541.

1 On or about April 30, 2009, Rustico Sugatain Blanco ("Borrower") and Charito Orcine
2 Blanco (collectively, the "Debtors") filed a voluntary petition under Chapter 7 of the Bankruptcy
3 Code, and Lois I. Brady was appointed as Chapter 7 Trustee. As a result of said filing, certain
4 acts and proceedings against Debtors and the bankruptcy estate are stayed as provided in
5 11 U.S.C. § 362.

6 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and
7 362(d)(2).

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I.

10 MOVANT IS ENTITLED TO RELIEF FROM THE 11 AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).

12 NO EQUITY

13 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
14 debtor does not have any equity in the property and the property is not necessary to the debtor's
15 effective reorganization.

16 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
17 § 362(d)(2) reflects congressional intent to allow creditors to
18 immediately proceed against the property where the debtor has no
19 equity and it is unnecessary to the reorganization, even where the
20 debtor can provide adequate protection under § 362(d)(1).
(Emphasis added).
Id. at 610 (emphasis added).

21 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court
22 stated that in determining whether equity exists in the property for purposes of § 362(d)(2), all
23 encumbrances are totalled, whether or not all the lienholders have joined in the request for relief
24 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194
25 (9th Cir. 1984).

26 An appropriate cost of sale factor should also be added to determine if the debtor has
27 any equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R.
28 283, 289 (Bankr. S.D. Cal. 1982).

1 On or about February 14, 2007, Borrower, for valuable consideration, made,
2 executed and delivered to Heritage Plaza Mortgage, Inc. ("Lender") a Note in the principal sum
3 of \$628,000.00 (the "Note"). Pursuant to the Note, Borrower is obligated to make monthly
4 principal and interest payments commencing April 1, 2007, and continuing until March 1, 2037,
5 when all outstanding amounts are due and payable. The Note provides that, in the event of
6 default, the holder of the Note has the option of declaring all unpaid sums immediately due and
7 payable. A true and correct copy of the Note is attached to the Declaration in Support of
8 Motion for Relief From Automatic Stay as exhibit A and incorporated herein by reference.

9 On or about February 14, 2007, the Borrower made, executed and delivered to
10 Lender a Deed of Trust (the "Deed of Trust") granting Lender a security interest in real property
11 commonly described as 276 Blossom Way, Hayward, California 94541 (the "Real Property"),
12 which is more fully described in the Deed of Trust. The Deed of Trust provides that attorneys'
13 fees and costs incurred as a result of the Debtors' bankruptcy case may be included in the
14 outstanding balance under the Note. The Deed of Trust was recorded on February 21, 2007, in
15 the Official Records of Alameda County, State of California. A true and correct copy of the
16 Deed of Trust is attached to the Declaration in Support of Motion for Relief From Automatic
17 Stay as exhibit B and incorporated herein by reference.

18 Subsequently, all beneficial interest in the Note and the Deed of Trust was sold,
19 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of
20 Deed of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached
21 to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit C and
22 incorporated herein by reference.

23 The obligation under the Note is in default as of July 1, 2008, for failure to make
24 payments to Movant. As July 22, 2009, the total obligation due and owing under the Note is in
25 the approximate amount of \$718,549.82, representing the principal balance of \$652,717.82,
26 interest in the sum of \$61,434.89, late charges in the amount of \$1099.04, escrow advances in
27 the amount of \$1,487.47, and a recoverable balance in the amount of \$1,810.60. This is an
28 approximate amount for purposes of this Motion only, and should not be relied upon as such to

1 pay off the subject loan as interest and additional advances may come due subsequent to the
2 filing of the Motion. An exact payoff amount can be obtained by contacting Movant's counsel.
3 Further, Movant has incurred additional post-petition attorneys' fees and costs in bringing the
4 instant Motion. Moreover, the total arrears under the Note are in the approximate sum of
5 \$39,764.45, excluding the post-petition attorneys' fees and costs incurred in filing the instant
6 Motion. A true and correct copy of the contractual payment accounting pursuant to Local Rule
7 4001-1(g)(1) is attached to the Declaration in Support of Motion for Relief From Automatic
8 Stay as exhibit D and incorporated herein by reference.

9 **II.**

10 **RELIEF FROM STAY**

11 **LACK OF EQUITY**

12 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
13 Statements, the fair market value of the Property is approximately \$485,000.00. True and
14 correct copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached to
15 the Declaration in Support of Motion for Relief From Automatic Stay as exhibit E and
16 incorporated herein by reference.

17 Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$485,000.00
Less:	
Movant's Trust Deed	\$718,549.82
EMC Mortgage's Trust Deed	\$156,351.00
Costs of Sale (8%)	\$38,800.00
Equity in the Property:	\$<428,700.82>

22 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since
23 this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is
24 entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

25 Debtors' Statement of Intent indicates it is the intent of the Debtors to surrender the Real
26 Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtors'
27 Statement of Intent is attached to the Declaration in Support of Motion for Relief From
28 Automatic Stay as exhibit F and incorporated herein by reference.

1 **III.**

2 **MOVANT IS ENTITLED TO RELIEF FROM THE**
3 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).**

4 **CAUSE - LACK OF ADEQUATE PROTECTION**

5 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to
6 adequate protection of its interest in the Property.

7 Movant submits that adequate protection in this case requires normal and periodic cash
8 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed
9 to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

10 Movant is informed and believes that Debtors are presently unwilling or unable to
11 provide adequate protection to the Movant and there is no probability that adequate protection
12 can be afforded to Movant within a reasonable time.

13 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.
14 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

15 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

16 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the
17 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
18 Trust;

19 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

20 3. Granting Movant leave to foreclose on the Real Property and to enforce the
21 security interest under the Note and the Deed of Trust, including any action necessary to obtain
22 possession of the Property;

23 4. Permitting Movant to offer and provide Debtors with information re: a potential
24 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan
25 Workout/Loss Mitigation Agreement, and to enter into such agreement with Debtors;

26 5. Alternatively, in the event this court declines to grant Movant the relief requested
27 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
28 reinstate and maintain in a current condition all obligations due under the Note and Deed of

1 Trust and all other deeds of trust encumbering the Real Property, including Debtors' obligations
2 to pay when due (a) the monthly installments of principal and interest, as required under the
3 Note; (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors
4 in order to protect Movant's interest in the Real Property, including all attorneys' fees and costs
5 incurred in the filing of this motion;

6 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion
7 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
8 law; and

9 7. For such other and further relief as the court deems just and proper..

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12 Dated: August 13, 2009

PITE DUNCAN, LLP

13
14 /s/ JOHN B. ACIERNO III (CA SBN 257176)
15 Attorneys for WELLS FARGO BANK,
16 NATIONAL ASSOCIATION AS TRUSTEE FOR
17 THE CERTIFICATEHOLDERS OF
18 STRUCTURED ASSET MORTGAGE
19 INVESTMENTS II INC. BEAR STEARNS
20 MORTGAGE FUNDING TRUST 2007-AR4
21 MORTGAGE PASS-THROUGH CERTIFICATES,
22 SERIES 2007-AR4
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